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11 IN THE UNITED STATES BANKRUPTCY COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA
13
14 SACRAMENTO

15 IN THE MATTER OF: CASE NO. 18-25756-B-13J

16 SIMS, DAVID E. DOCKET CONTROL #:PGM-1
17 SS#XXX-XX-2801 DATE: OCTOBER 9, 2018
18 TIME: 1:00 P.M.
19 DEPT#: B - COURTROOM 32
20 HONORABLE JUDGE JAIME

21 _____/

22 **MOTION TO EXTEND THE AUTOMATIC STAY PURSUANT TO**
23 **11 U.S.C. 362(c)(3)(B) AS TO ALL CREDITORS**

24 Debtor, David E Sims, by and through his attorney of record,
25 Peter G. Macaluso, respectfully moves this court for an Order
26 Extending the Automatic Stay pursuant to 11 U.S.C. 362(c)(3)(B),
27 as to all creditors in the above captioned case.

28 This motion is made pursuant to 11 U.S.C. 362(c)(3)(B) and
Local Bankruptcy Rule 9014-1(f)(2) and based on these moving
papers, the Debtor's declaration, the records and pleadings on
file herein, and upon such other oral and documentary evidence as
may be presented at the hearing on this motion.

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1 **I. PROCEDURAL HISTORY**

2 1. Debtor filed a previous Chapter 13 case, Case #17-20765
3 on February 7, 2017, which was dismissed on or about July 17,
4 2018.

5 2. The current Chapter 13 case was filed on September 12,
6 2018. The instant motion to extend the automatic stay is
7 schedule to be heard before the expiration of the initial 30 day
8 automatic stay, as required by statute (see In re Taylor, 334
9 B.R. 660 (Bank. D.Minn. 2005)).

10 3. The instant motion is being filed within 30 days of the
11 filing of the instant chapter 13 case (see In re Thomas, B.R.
12 2006 WL 278544).

13 4. The Debtor filed a Chapter 13 Plan on September 12,
14 2018, which plan is confirmable and very likely to successfully
15 complete given the Debtor's income and expenses. Refer to
16 Exhibit "A" and Exhibit "B" filed herewith.

17 5. The current plan provides for Franklin Credit
18 Management Corp. / BOSCO (2nd DOT on Debtor's real property) as a
19 Class 2 claim and Ocwen Loan Servicing (1st DOT on Debtor's real
20 property) as a Class 4 claim. The payments required are set at
21 \$2,200.00 per month for 18 months, a lump sum payment of
22 \$205,000.00 from refinance of real property (or amount necessary
23 to pay the claim in full), then \$150.00 for 17 months.

24 **II. ARGUMENT**

25 11 U.S.C. 362(c)(3)(A) limits the automatic stay to thirty
26 (30) days after the filing of the later case when the Debtor has
27

1 filed one prior case that has been dismissed without prejudice
2 within the past year. The Code also allows for the extension of
3 the automatic stay upon motion for a party in interest within
4 thirty (30) days of filing of the most recently filed case. 11
5 U.S.C. 362(c)(3)(B). The Code section goes on to explain the
6 moving party must demonstrate that the most recently filed case
7 has been filed in good faith. Id.

8 In re Sarafoglou, 345 B.R. 19 (Bankr. D. Mass. 2006), sets
9 out a concise formula to evaluate whether a second bankruptcy
10 filing was filed in bad faith and therefore not subject to the
11 extension of the automatic stay. The factors the Court were to
12 consider are: (1) whether the case was filed to "obtain
13 legitimate bankruptcy law protection;" (2) whether the debtor "is
14 eligible for such protection and relief; (3) whether the debtor
15 "is pursuing such protection and relief honestly;" and (4)
16 whether the debtor "has sufficient resources to render the
17 pursuit meaningfully."

18 Good cause exists for the granting of the Motion to Extend
19 Automatic Stay as to all creditors in this case. The extension
20 is necessary to protect the Debtor's assets, absent the instant
21 filing as the Debtor's current case overcomes any presumption of
22 bad faith.

23 Based on the aforementioned elements, the instant case was
24 filed in order to save Debtor's home from foreclosure actions.
25 The Debtor is a building inspector for the City of El Cerrito, has
26 been employed for more than 2.5 months, has a current gross
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1 monthly income of \$5,766.37, deductions of \$2,298.12, and a net
2 monthly income of \$3,468.25. The Debtor also receives rent income
3 from his son in the amount of \$1,350.00. This results in a
4 combined monthly income of \$4,818.25.

5 Further, Debtor's Schedule I and B22C reflect that he is
6 earning enough wages and money to cover all their necessary
7 obligations in addition to the proposed Chapter 13 plan. The
8 Debtor reflects reasonable and necessary expenses of
9 approximately \$2,618.25, allowing for a monthly plan payment of
10 \$2,200.00, the ability to fund the current plan, and obtain a
11 discharge (See In re Charles, 334 B.R. 207, 219 (Bank. S.D.Tex.
12 2005)).

13 Lastly, there is no indication that the Debtor engaged in
14 any type of scheme or other operation to abuse the bankruptcy
15 process.

16 III. CONCLUSION

17 Although the dismissal of the Debtor's previous case raises
18 the presumption of bad faith, the Debtor asserts that he has
19 satisfactorily shown that the instant case was filed in good
20 faith, and that there is sufficient justification to extend the
21 automatic stay as to all creditors.

22 WHEREFORE, Debtor prays that this Court issue its Order
23 Extending the Automatic Stay as to all creditors in the above
24 captioned case.

25 Date: September 24, 2018

/s/ Peter G. Macaluso

Peter G. Macaluso, Attorney at Law